



City of Seattle

**Department of Planning and Development**  
D. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR  
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

**Application Number:** 3009340  
**Applicant Name:** Susan McNabb  
**Address of Proposal:** 3218 Portage Bay Place East

**SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development Permit to allow the addition of a 2-story (1,200 square foot) floating home (for a total of two floating homes and 1 single-family structure). Project includes parking for three vehicles in two separate garages and remodel of the existing single-family structure. The garage proposals require *Variances* from Land Use Code standards.\*

\*(Original application proposed two garages containing four parking spaces. Applicant has revised the application to the above description.)

The following approvals are required\*\*:

**Shoreline Substantial Development Permit** – (SMC Chapter 23.60) to allow a floating home in a UR (Urban Residential) shoreline environment.

**Variance** – (SMC Chapter 23.44.016.D.1 & 10) to allow one two-car and one one-car garage in the required front yard.

**Variance** – (SMC Chapter 23.54.030.F.1b) to exceed allowed curb cut width.

**Variance** – (SMC Chapter 23.54.030.G) to allow less than the required sight triangle. (This item added after initial project review.)

\*\* [Original application included a Variance to allow adjacent curb-cuts to be less than the required lateral distance (SMC Chapter 23.54.030.F.1.d). This is no longer required for the applicant's revised proposal.]

**SEPA - Environmental Determination** - (SMC 25.05)

**SEPA DETERMINATION:** ☐ Exempt ☐ DNS ☐ MDNS ☐ EIS

☒ DNS with conditions

☐ DNS involving non-exempt grading, or demolition, or involving another agency with jurisdiction.

## **BACKGROUND DATA**

### **Subject Site and Vicinity**

The subject property is zoned Single Family-5000 (SF-5000) and is located on the southern side of Portage Bay across from the University of Washington campus. The shoreline environment designation for both the dry land and submerged portions of the lot is Urban Residential (UR). The site currently contains a single-family structure built to the shoreline edge (Ordinary High Water Mark, or OHWM), a houseboat partially extending onto the DNR (Department of Natural Resources) submerged waterway in Portage Bay, two piers, a single-car garage fronting Portage Bay Place East with storage space below and a storage shed along the north property boundary.



The site has approximately 100 feet of frontage along Portage Bay Place East and is approximately 137 feet in depth.

Although fronting on Portage Bay Place East, most of the site including the existing house location and shoreline is considerably lower in elevation than this frontage. Portage Bay Place East is a narrow, substandard right-of-way approximately fifteen feet in width, bordered by a steep incline to the west. The site also has a driveway that extends toward the shoreline from Portage Bay Place East. Because of Portage Bay Place East's 15-foot and sub-standard right of way (ROW) width there is no on-street parking on either side of this street in front of the subject property. Development in the vicinity consists of floating homes, single and multi-family residences with similar zoning and shoreline designations.

### **Proposal Description**

The project includes the renovation of the existing single-family structure, the retention of the existing floating home water ward of the single-family structure, the addition of a new floating home next to the site's second pier (pier along the north property boundary), the replacement of the decking of both piers with metal grated decking, the construction of one two-car and one one-car garage and the construction of retaining walls on the site's slope between the proposed garages and fronting on Portage Bay Place East. The existing driveway from Portage Bay Place East will be retained but its impervious surface material will be removed and pervious pavement / planting will be installed per plan. The driveway would be retained to allow access to the shoreline area of the site for small boats (kayaks) etc. Removal of the driveway would require substantial grading and the construction of a retaining wall in its place. The current and remaining undeveloped portion of the lot between the sloped property frontage and the shoreline will be planted with a variety of landscaping and remain undeveloped.

A Shoreline Substantial Development Permit (SSDP) is required for all work, which is in the 200-foot Shoreline Environment. The renovation of the existing single-family structure is exempt from

applying for a SSDP but must comply with the State Shoreline Management Act and provision of the Shoreline Master Program (SMC 23.60). A SSDP is required for the installation of a new floating home and the replacement decking for the two existing piers. The proposed garages, because they would be located in the required front yard would be unable to meet this and other related Code provisions, and require the following *Variances*:

	Standard	Proposed
<b>1</b>	<i>Parking and Garages not allowed in required front yard unless there is at least a 20-foot elevation drop within the first 60-feet of property depth.</i>	A one-car and a two car garage. The southern garage would be 4' to 4.5' from the ROW; the northern garage would be 4.5' from the ROW.
<b>2</b>	<i>Curb cut width of a maximum 10' each. For sites with more than 80 feet of ROW frontage, two curb-cuts can be combined into one 20' curb cut.</i>	Southern garage: a 23-foot curb cut. Northern garage: a 10-foot curb cut (The site is >100' in width and has one existing curb-cut.)
<b>3</b>	<i>Ten-foot by 10-foot sight triangles required where driveways meet the ROW.</i>	Southern garage: two 4 to 4.5-foot by 10-foot sight triangles. Northern garage: one 4.5 foot by 10 foot and one 4.5 foot by 5 foot sight triangle.

#### Public Comment

Two comment letters were received during the comment period, which ended on January 19, 2010. One requested a comment period extension (extended until February 2, 2010). The following comments were submitted:

- “No problem” with the proposed project. Please allow the off-street parking so the project / site uses less on-street parking.
- The proposed garages would reduce the passing room for vehicles along this already narrow street.
- The proposed 1.5-foot set-back for the garage along the north property boundary would block visibility to the south along Portage Bay Place East for cars pulling out of the neighboring property.
- If the City grants permission to build garages this close to the right of way, then others will expect to do the same. This will exacerbate the above mentioned problems.
- Neither an existing Alder (possible Laurel) nor Cherry along the north property boundary are shown on the submitted plans. These should be protected and retained during and after construction. They are beneficial for soil stabilization in this sloped area.
- To assist in stabilizing the site and surrounding area soil and slopes, the project should include the routing of the existing surface storm-water on Portage Bay Place into pipe(s) and then directly into Portage Bay.

#### **ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

The proposal is located within the Urban Residential (UR) Shoreline Environment as designated by the Seattle Shoreline Master Program (SSMP). The Shoreline Master Program, Chapter 23.60 of

the Seattle Municipal Code, regulates use and development in the City's shoreline districts to implement the policy and provisions of the Shoreline Management Act of 1971 and the Shoreline Goals and Policies.

The SSMP requires that a shoreline permit be obtained prior to the undertaking of any substantial development within a shoreline environment. SMC Section 23.60.030 includes criteria for evaluating a shoreline permit. A substantial development permit shall be issued only when the development proposed is consistent with:

- A. The policies and procedures of Chapter 90.58 RCW;
- B. The regulations of this Chapter; and
- C. The provisions of Chapter 173-27 WAC.

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

#### **THE POLICIES AND PROCEDURES OF CHAPTER 90.58.RCW**

The State of Washington Shoreline policies (RCW Chapter 90.58) provide for the control of pollution and prevention of damage to the natural environment, and for the protection of the resources and ecology of the shoreline over the long term. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. The Shoreline Management Act of 1971 provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60 that also incorporates the provisions of Chapter 173.27 WAC. Development on the shorelines of the State is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions.

The City of Seattle Shoreline policies incorporate these goals by reference and include area objectives pursuant to these goals. These policies contemplate protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

As discussed below. This proposal is consistent with the policies and procedures of the RCW Chapter 90.58.

**B. THE REGULATIONS OF CHAPTER 23.60**

The regulations of SSMP Section 23.60.064 require that the proposed use: 1) conform to all applicable development standards of both the shoreline environment and underlying zoning; 2) be permitted in the shoreline environment and the underlying zoning district; 3) satisfy the criteria of shoreline variance, conditional use, and/or special use permits as may be required; and 4) SMC 23.60.014 C. for standards applicable to environmentally critical areas as provided in Seattle Municipal Code Chapter 25.09, Regulations for Environmentally Critical Areas, as applicable in the Shoreline District. If there are any conflicts between the Seattle Shoreline Master Program and Seattle Municipal Code Chapter 25.09, the most restrictive requirements shall apply.

The policies support and encourage the establishment of water dependent uses. Floating homes, because of their historic role in Seattle, are designated as a water dependent use, but the increase of floating home moorages and their associated piers or the increase in use of the shoreline or water area by floating homes, however, is not necessarily encouraged. The intent is to recognize the existing floating home community in Lake Union and Portage Bay, while protecting natural areas, preserving public access to the shoreline, and preventing the displacement of water dependent commercial and manufacturing uses by floating homes. Areas with substantial concentrations of existing floating homes shall be given a designation that preserves residential uses. The proposal site is located in an area designated as Urban Residential, the purpose of which is to protect residential areas in a manner consistent with the Single family and Multi-family Residential Area Policies. Therefore, the proposed project would conform to the policies of the comprehensive plan and would be consistent with the purpose of the UR designation.

**Development Standards**

The proposal to install a new floating home, replace two existing piers, remove a substantial portion of an existing bulkhead, construct two new accessory parking structures and renovate a non-conforming structure are permitted outright in SMC 23.60.540, which governs the UR shoreline environment. The proposed action is therefore subject to:

1. *The general development standards for all shoreline environments (SSMP 23.60.152);*
2. *The general development standards for non-conforming structures (SSMP 23.60.124);*
3. *The general development standards for piers accessory to residential development (SSMP 23.60.204)*
4. *The development standards for floating homes (SSMP 23.60.196);and*
5. *The development standards for uses in the UR environment (SSMP 23.60.570);*

**General Development Standards for all Shoreline Environments (SMP 23.60.152)**

These general standards apply to all uses in the shoreline environments. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. Relevant to this proposal, SMC 23.60.152.H requires that “*all shoreline development and uses must be located, designed, constructed, and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to,*

*spawning, nesting, rearing and habitat areas. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.”*

This project is proposed to occur in the “littoral” (shallow water) area and adjacent to the shorelines of Portage Bay / Lake Union. The littoral area is part of the migration corridor of Chinook salmon and serves as rearing and migratory habitat for Chinook salmon from the Cedar River and potentially other water bodies in Water Resource Inventory Area 8. Shading of the water from proposed over water structures and structures adjacent to the water reduces amount of light available to phytoplankton and aquatic macrophytes and increases the risk of predation on juvenile salmonids.

Section 23.60.152 H requires avoidance of impacts first and if impacts cannot be avoided then mitigation measures to protect habitat functions. As discussed below, the City’s 2004 Best Available Science and other documentation show that development over water and within 100 feet landward of the Ordinary High Water Mark (OHWM) has adverse impacts on the shoreline habitat. Development at this location over water would have adverse impacts, if unmitigated, to the fish and wildlife habitat conservation areas (SMC 23.60.152.H and 23.60.152.I).

Clearly identified short and long-term impacts on juvenile Chinook salmon and the aquatic environment include water quality impacts from construction and water quality and over-water coverage impacts during the life-time use of the pier over the habitat of a threatened species.

The proposed work will take place in and adjacent to water and some delivery of construction material may take place over-water. Both of these activities create the potential for debris and other deleterious material to enter the water during the proposed work. The entrance of these materials into the water can pose the potential danger of water and near shore contamination and shoreline erosion. The contamination from spills could lead to both water quality and aquatic habitat damage, all with impacts on protected fish species. To mitigate for these construction impacts the proposal is **Conditioned** to follow construction Best Management Practices (BMP’s), including the following:

- Prior to commencing construction an emergency containment plan and procedures shall be developed for all toxic material that will be kept on site. All necessary equipment for containment and clean-up of this toxic material shall be stocked on the site and a sufficient number of personnel that will be on-site during construction shall be trained in the proper implementation of this plan. The plan shall also include these requirements:
  - Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water.
  - Equipment using oil, gasoline, or diesel used on site shall be checked daily for evidence of leakage, if evidence of leakage is found, further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

- The use of a vibratory hammer for any pile installation shall occur as much as possible. Best Management Practices and noise abatement measures such as cushions and bubble curtains shall be utilized in the event impact hammer use is required.
- A turbidity curtain and debris boom shall be deployed around the project area during in- and over-water work to decrease the probability of debris or other deleterious material from entering the water during the proposed work. If floating debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.
- If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during the proposed work.

Also, to reduce the possibility of construction impacts on protected fish species the following **Condition** applies:

- Work water-ward of ordinary high water will be restricted to work windows established by the Washington Department of Fish and Wildlife and the Army Corps of Engineers.

The City's Best Available Science report, determined that over-water coverage reduces the amount and quality of natural habitat of juvenile Chinook salmon and provides habitat for introduced predator species of juvenile Chinook. The impacts of over-water structures on juvenile Chinook habitat include shading of the near-shore lake environment causing some of the Chinook salmon to alter their migration pattern by following the outside of the overwater structure into deeper water. While in deeper water the juvenile Chinook are more susceptible to predation by larger fish because they have no refuge.

Shading may also provide cover for predator species of juvenile Chinook including smallmouth bass, an introduced species that prey on juvenile Chinook salmon. Over-water structures contribute to the simplification of the shoreline environment. The simplification of the near-shore lake environment eliminates the amount of habitat available for juvenile Chinook to find refuge from predators including smallmouth bass. Ideal refuge for juvenile Chinook is shallow water that allows the juveniles to escape from predation by larger fish. Complexity in the shallow water habitat in the form of overhanging vegetation, a sinuous shoreline, and woody debris in the very shallow areas provides refuge in the form of undercut banks and interstitial spaces for the juvenile salmon to escape the predators.

The following measures have been agreed upon by the applicant and DPD to minimize and mitigate for the project's impacts to fish and wildlife habitat conservation areas and natural shoreline processes and will be **Conditions of Approval** for this permit (SMC 23.60.152.H and 23.60.152.I):

- The decking on both piers will be replaced and shall be constructed of a grated decking material to allow light transmission to the water for aquatic vegetation growth and reduced predation potential on migrating salmon. At least 80 percent light shall reach the water under the pier at the completion of the new pier.
- No treated wood shall be used in the decking material. No artificial lighting will be included in the pier design or use.

- No pier fascia shall be installed (it blocks natural light from reaching under the pier).
- Any treatment of the steel or aluminum material on this pier shall be non-leaching and non-toxic to the estuarine and marine environment.
- All trash and debris shall be removed from the lake bottom water-ward of ordinary high water on this parcel in order to reduce predator habitat for juvenile salmon and expose natural substrate in the near-shore environment.
- Impervious asphalt driveways and parking areas will be removed and replaced with pervious paving.
- A substantial portion of the existing bulkhead will be removed (as shown on the plans) for the creation of a “pocket beach.” Existing boulder armoring will be removed, invasive plants eliminated, and the area re-graded to a gentle slope (approximately 1’ vertical to 7’ horizontal, with a terraced log condition on the landward side). Tethered logs to retain side-slopes and the introduction of an approved fish-mix gravel to the areas slightly above and below Ordinary High Water Mark (OHWM).
- Introduction of emergent plantings (water tolerant/dependent) above and below the OHWM in connection with the pocket beach. These plantings will help restore the shoreline ecology and the functional values associated with this emergent community.
- Addition of shoreline/upland plantings on the remaining non-developed areas of the site. Plant selection will be nearly 100% natives and near-natives, with the one exception in the area noted as “Eco-turf or Creeping Red Fescue.” A low water/low fertilizer regime will be employed for all seed mix scenarios. In other areas of the site native plant communities are proposed, with a majority of the plants specified from the *Tsuga heterophylla* zone of lowland Western Washington.
- Maintenance and monitoring of all plantings will occur as follows:
  - Survival in a healthy condition will be guaranteed by the landscape contractor for all plants through the entire first growing season.
  - A temporary irrigation system will be installed to facilitate plant establishment over the first 2-3 growing seasons.
  - A target of 80% plant survival at the end of year five is to be achieved. Maintenance is to include removal and replacement of dead plants and weeding of non-native invasive species. Chemical fertilizers, herbicides, and pesticides will not be utilized for the life of the project.
  - The existing overhanging pine will be replaced in-kind if it is not possible to retain.

Each of these measures is believed to improve habitat conditions for Chinook salmon and other juvenile salmonids that utilize the site. Collectively these measures are believed to help reduce dark areas under the pier and increase the availability of near-shore habitat for migration and rearing, which will allow the juvenile salmon to remain in the shallow water during their migration and reduce the juvenile Chinooks’ vulnerability to predation.

The proposed mitigation landscaping outlined above and shown on Sheets L1.0 and L 2.0 of the plans (dated May 12, 2010) is an important component of this project. Due to the site’s constrained work area, topography and the possible need to phase the proposed work (e.g. garages and retaining wall, then houseboat, then pier decking, then house renovation, or other sequence) it may be preferable to delay some elements of the landscape installation until construction of a surrounding



building / structure is completed. However, mitigation for the impacts of increased overwater coverage should not wait until the final completion of entire project scope. Consequently, the project is **Conditioned** to require the owner and / or applicant to submit a plan for the scheduled completion of the approved landscape mitigation plan. The plan shall detail what portions of the landscape mitigation will be completed as different portions of the project are completed (e.g. the placement of the houseboat, the new decking, the construction of the garages, and the renovation of the house).

*General Development Standards for Floating Homes (SSMP 23.60.196)*

This section sets forth standards for floating home moorages and the floating home structures within these moorages. The additional floating home was reviewed under the moorage standards and those for height and over water coverage. The proposal fully conforms to these development standards.

*Development Standards for UR Shoreline Environments and Non-Conforming Structures (SSMP 23.60.570 & 124)*

The renovation of an existing non-conforming structure and the construction of accessory parking garages for this structure and the two floating homes conform to the shoreline development standards of this zone.

**C. THE PROVISIONS OF CHAPTER 173-27 WAC**

WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistency with WAC 173-27 and RCW 90.58.

Thus the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

Summary

Minimal additional adverse impacts to the lake bed or water quality are expected, and the proposed structures and pier decking will be consistent with the provisions set forth by 90.58 RCW, 173-27 WAC, and Chapter 23.60 SMC also known as the Seattle Shoreline Master Program (SMP).

**DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED** subject to the conditions above and listed at the end of this report.

## **ANALYSIS - VARIANCE**

Variances from the provisions or requirements of the Land Use Code shall be authorized only when all of the following facts and conditions are found to exist:

1. *Because of unusual conditions applicable to the subject property including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; and*

The project site has several unusual topographic, size, and surrounding conditions.

- The site fronts on the Portage Bay Place East right of way (ROW), which, although is a City street, has only 15-feet of total width. On-street parking is not available in the vicinity of the subject site, although almost all parcels have a level area abutting the ROW used for parking, which visually and functionally appear to be road shoulders or parking lanes but is their front yard.
- Along the edge of the ROW / property boundary, the site has a seven-foot to nine-foot wide level area that provides on-site parking.
- From the street level parking area the topography descends approximately nine-feet to a relatively level area before the shoreline / lake-edge begin. This level area varies in width from 25 to 30 feet.
- The 25-feet extending landward from the shoreline is classified as *Environmentally Critical Area Shoreline Habitat Buffer*.
- Although the site currently has a driveway that descends from Portage Bay Place it leads to the water's edge and the *Shoreline Habitat Buffer*.
- Numerous parcels along the east side of Portage Bay Place East have parking, parking structures and garages, or the residential structure within the front yard.
- The parcels along the west side of Portage Bay Place East have steeply rising topography that extends from the ROW edge. Almost all, if not all, have their site access from Fuhrman Avenue East to their west. Only one or two parcels have been excavated for parking or retaining walls at the level of Portage Bay Place East; it appears that this parking is used by frequenters of parcels along Portage Bay Place East.

The Land Use Code generally requires a 20-foot front yard (setback) in Single-Family zones. Garages or the required on-site parking space may not be located within that yard except in limited situations, although parking on the driveway leading to that parking space is allowed. The garage or the required on-site parking space may be located within the front yard on lots with downhill yards provided there is a minimum 20-foot vertical drop within the first 60-feet of lot depth from the ROW. Detached garages accessory to permitted residences are allowed in the *Shoreline Habitat Buffer*, although residences are not allowed outright in the buffer.

The applicant proposes to locate two garages in the front yard and substantially out of the *Shoreline Habitat Buffer*. Although garages are allowed in the *Shoreline Habitat Buffer*, if located in the buffer along with the required vehicle maneuvering this would require extensive grading and degradation of this *Environmentally Critical Area* and, in the end, not provide a practical and usable parking area. This would effectively leave the existing front yard parking in place since it occurs on what functions as the ROW shoulder.

Because of the above listed site constraints and conditions the location of garages in the front yard also requires additional *Variances* from other Code provisions.

- Reduced Sight Triangle: Both proposed garage locations are less than 10-feet from the roadway edge which does not allow for the required 10-foot by 10-foot sight triangle.
- Width of Curb-Cuts: One 10' curb cut is allowed for each 80-feet of ROW frontage; therefore two 10-foot curb-cuts or one 20-foot curb cut are allowed for this 100-foot wide frontage. The site is greater than 100-feet in width and has one existing curb-cut. The short distance between any sizes of proposed garage and the ROW edge does not provide the distance needed for any driveway to "neck-down" to even one 20-foot curb-cut. Consequently, a curb-cut for the two-car garage is proposed to match the overall width of their garage doors (not structure, which would be more). This distance is 23-feet 1-inch.

Based on the unusual conditions of the site and surroundings listed above and the non-applicability of the Land Use Code provision that allows front yard parking on down-sloping lots, the strict application of the Land Use Code for the three Code sections listed (the prohibition of locating garages in the site's front yard, width and number of curb-cuts, and size of sight triangles) would deprive the property of rights and privileges enjoyed by other properties, specifically the ability to have structured parking, in the same zone and vicinity.

2. *The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and*

One on-site parking space is required by Code for each residential unit; three on-site parking spaces are required for the existing single-family structure and two floating homes. The minimum necessary is therefore generally to allow the Code minimum requirement.

The site's ROW frontage currently is level and graded to the ROW elevation and provides an area for four automobile parallel parking spaces. (One space is in front of the existing single-car garage, which appears to be in poor structural condition and is unusable as parking.) There is also room for a fifth parallel parked vehicle in front of the existing driveway.

The applicant, however, proposes to construct one two-car and one one-car garage (with slightly wider width than standard to accommodate storage). The north garage would be built five-feet from the side property line and four-feet, six-inches from the ROW property line. The south garage has a staggered façade and would be from four to four and one-half feet from the ROW property line. The minimum necessary to afford relief would be to allow three garage parking spaces in the front yard and the other requested variances that are necessary to achieve this.

3. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located; and*

Almost all, if not all, properties on the water side of Portage Bay Place East either have surface parking or garage / structured parking in their front yards. Where there are structures in the front yard the majority are further from their ROW property lines than proposed by the applicant. This

ROW width and the adjacent parking arrangements are not conforming to the Land Use Code standards for traditional street improvements and parking. This street functions like and has the character of a mews or alley with traffic volumes and speeds that are low and slow.

The location of the two proposed garages closer to the ROW property line than most in the vicinity, or as required by Code, do not allow provision of full driveway exit sight triangles. However, these locations have been proposed to try to prevent other detriments to the public welfare and the property itself, namely development of the *Shoreline Habitat Buffer*, an *Environmentally Critical Area* and preservation of a healthy Red Cedar that is located next to the northern garage. Consequently their proposed locations should be viewed with these beneficial goals in mind.

The location of the southern garage with only a four to four and one-half foot set-back would allow only a sight triangle of that depth when a 10-foot depth is required. The four and one-half foot front set-back and five-foot side setback next to the side property boundary for the northern garage would only allow that depth of sight triangle and a 10-foot width on one side and a five-foot width. However, the same effective safe sight lines could be achieved by the addition of exit mirrors on the exterior of the garage that provide views up and down the street, similar to those added in areas with building facades / garage exits at the property line and sidewalk. This would allow exiting drivers to see on-coming vehicles and pedestrians. In the experience of DPD, the inclusion of exit mirrors as a ***Condition of Approval*** would prevent detriment to the public welfare or injury to the surroundings and allow granting of the variance requests necessary to locate the garage as proposed.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue hardship or practical difficulties;*

Prohibiting parking in the front yard of this unusual site would effectively prevent the applicants from providing on-site parking without locating a smaller quantity of parking along the shoreline and in the *Shoreline Habitat Buffer*. As described in this document above, detached garages are allowed in the *Shoreline Habitat Buffer*. However, due to the limited area there, parking and maneuvering would be difficult; hence the siting of garage parking spaces there would not be practical. Additionally, Best Management/Development Practices militate against locating parking in a shoreline buffer.

The approval of two garages with a total of three parking spaces in the front yard, as ***Conditioned*** in this document, along with the associated variances necessary would be the minimum necessary to avoid undue hardship and practical difficulties for the applicant.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code regulations for the area.*

The purpose of the Land Use Code is to protect and promote public health, safety and the general welfare through a set of regulations and procedures for the use of land which conforms to the City's land use policies. It is the responsibility of the City to preserve and protect areas that are currently in predominantly single-family residential use. The construction as proposed is in character with the surrounding development, preserves the existing neighborhood character and brings the parking requirements of the subject site in closer compliance with Code standards. No adverse effects on adjacent properties in the area are anticipated and the public interest will not suffer as a result of these variances.

## **DECISION - VARIANCE**

1. **Variance** – (SMC Chapter 23.44.016.D.1 & 10) to allow one two-car and one one-car garage in the required front yard is ***Conditionally Approved***.
2. **Variance** – (SMC Chapter 23.54.030.F.1b) to exceed allowed curb cut width. A 23-foot, one-inch curb-cut width necessary to accommodate the two-car garage as shown in the approved plans is ***Conditionally Approved***. No variance for a curb-cut greater than 10-feet is necessary for the northern garage.
3. **Variance** – (SMC Chapter 23.54.030.G) to allow less than the required sight triangles for both garages (as described in this document above) is ***Conditionally Approved***.

## **ANALYSIS – SEPA**

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated November 24, 2009. The information in the checklist and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SSMC 25.05.665 D) clarifies the relationship between codes, policies and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states in part: “*where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,*” subject to some limitations. Under such limitations/circumstances (SSMC 25.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

### **Short-term Impacts**

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated November 24, 2009. The information in the checklist and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SSMC 25.05.665 D) clarifies the relationship between codes, policies and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states in part: “*where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,*” subject to some limitations. Under such limitations/circumstances (SSMC 25.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

### Short-term Impacts

The following temporary or construction-related impacts are expected: water quality impacts from excavation caused erosion for the proposed garages, over-water construction from the removal of existing piers and installation of new piers and remodeling of the existing house structure which is at the Ordinary High Water Mark; decreased air quality and increased greenhouse gases (GHG) contributions due to suspended particulates from construction activities, hydrocarbon emissions from construction vehicles and equipment, and the manufacture of construction materials; street blockages and demand for parking from construction material delivery and for personnel; and construction noise impacts on the surrounding properties. Several adopted codes and/or ordinances provide mitigation for some of the identified impacts:

- The Stormwater, Grading and Drainage Control Code regulate site excavation for foundation purposes and require that Best Management Practices for soil erosion control techniques during construction.
- Puget Sound Clean Air Agency regulations require control of fugitive dust to protect air quality. The Building Code provides for construction measures in general.
- The Street Use Ordinance controls the temporary blocking of rights of way (ROW) during construction and has requirements for excavation at or near the property boundary with the ROW.
- Finally, the Noise Ordinance regulates the time and amount of construction noise that is permitted in the city.

Compliance with these applicable codes and regulations will reduce or eliminate most short-term impacts to the environment. However, given the sensitive nature of the shoreline and aquatic environments, the non-standard configuration of the Portage Bay Place East ROW, and the increasing understanding of the severity of impacts from GHG emissions additional analysis of anticipated impacts to shoreline and aquatic habitat and air quality is warranted.

### Water Quality and Plants and Animals

The proposed construction work will take place in and along the waters of Portage Bay / Lake Union. Additionally, some construction material may be delivered by barge over-water. With the proposed work taking place in and adjacent to water and some delivery of construction material taking place over-water, there exists the potential for debris and other deleterious material to enter the water, disturbance to the shoreline and increased water turbidity during this proposed work. However, best management practices (BMPs) and an emergency containment plan, as outlined above in “*Shoreline Environment: Development Standards* are Shoreline ***Conditions of Approval***, hence no further SEPA conditions for these impacts is warranted.

### Air Quality

The indirect impact of construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions

which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant due to the relatively minor contribution of greenhouse gas emissions from this project or the extent or duration of construction machinery emissions impacts on surrounding properties. Consequently no air quality mitigation is warranted.

#### Construction Impacts – Transportation and Pedestrian Circulation

Portage Bay Place East is the only vehicle access to all properties along the water side of this street past the subject site. The street then ends without connection to the surrounding street system approximately 700-feet past the subject site. The paved and ROW widths are only 15-feet total. Blockage of the street would cause safety problems for general vehicle maneuverability, resident and visitor access to their properties and access for emergency vehicles (police, fire and ambulance) and service vehicles (garbage etc). However, occasional and very short term blockages for the delivery of construction materials, etc may be unavoidable and therefore necessary.

To accommodate the needs for material delivery etc while maintaining access to surrounding properties for residents, visitors, and emergency and service vehicles this project is **Conditioned** as follows:

Full road width shall be maintained for emergency vehicle access to the site and properties further along the street for the duration of all construction activity unless a narrower width is approved by SDOT and meets emergency vehicle access requirements. However, occasional and very short term blockages may be necessary for the delivery of construction materials and therefore unavoidable. In these limited unavoidable situations, the driver of any blocking vehicle must remain with the vehicle to move it on demand. Additionally, to avoid road blockage during typical resident commute times, material delivery shall not occur before 9AM and after 4:30 PM on weekdays and weekends.

#### Construction Impacts –Noise

Although there are numerous residences surrounding the project site and any construction activity, even the relatively small scale of excavation for and the construction of detached garages, the extensive remodeling of the single-family residence, the removal of the bulkhead, general site work of the non-developed portions of the site and the removal and replacement of the existing piers, the Noise Ordinance regulations of the permitted levels and times of construction work will offer adequate mitigation of anticipated noise levels and impacts. Consequently, not mitigation is required.

#### Long-term Impacts

Significant long-term or use related impacts to Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are anticipated from the proposal. These are an increase of overwater coverage and substrate alteration at the site due to the proposed piers and floating home. Also, long-term *Air Quality* impacts are anticipated from this proposal.

### Air Quality

The overall number of vehicular trips to the site due to the addition of another residence is expected to increase from the amount currently generated by the existing floating home. This will result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant due to the relatively minor contribution of greenhouse gas emissions to the region from this project, therefore no mitigation is necessary.

### Water Quality and Plants and Animals

The City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.* However, no **Conditioning** under SEPA is warranted because adequate mitigation for these long-term effects through SMC 23.60.152, Development Standards are **Conditions of Approval** for the Shoreline Substantial Development Permit, as discussed above.

## **CONDITIONS -- SHORELINE**

### Prior to SSDP and MUP Permit Issuance

1. Submit a timing plan for the installation of the required landscape mitigation shown on Sheets L1.0 and L 2.0 of the plans (dated May 12, 2010) to the land use planner for review and approval.

### Prior to the Issuance of Any Building Permit

2. Develop and submit an emergency containment plan and procedures for all toxic material that will be kept on site. This shall include these requirements:
  - A. All necessary equipment for containment and clean-up of this toxic material shall be stocked on the site and a sufficient number of personnel that will be on-site during construction shall be trained in the proper implementation of this plan.
  - B. Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water.
  - C. Equipment using oil, gasoline, or diesel used on site shall be checked daily for evidence of leakage, if evidence of leakage is found, further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

### Prior to Final Approval of Building Permits

3. Any damage to vegetation caused by construction shall be mitigated/replaced at the completion of the project. Any vegetation must be replaced with native vegetation per SMC 25.09.200.



4. The proposed landscaping mitigation plan shown on Sheets L1.0 and L 2.0 of the plans dated May 12, 2010 shall conform to the approved installation timing plan (Condition 1 above) house by the completion of the houseboat installation project. Contact the Land Use Planner to at least three days prior to Final Approval of the Building Permit for review and approval of the landscaping installation.

During Construction

5. The use of a vibratory hammer for any pile installation shall occur as much as possible. Best Management Practices and noise abatement measures such as cushions and bubble curtains shall be utilized in the event impact hammer use is required.
6. A turbidity curtain and debris boom shall be deployed around the project area during in- and over-water work to decrease the probability of debris or other deleterious material from entering the water during the proposed work. If floating debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.
7. If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during the proposed work.
8. Work water-ward of ordinary high water will be restricted to work windows established by the Washington Department of Fish and Wildlife and the Army Corps of Engineers.

**CONDITIONS – VARIANCE**

Prior to MUP Permit Issuance

9. Update plans to include required garage exit mirrors.

Prior to Final Approval of Garage Building Permits

10. Install required garage exit mirrors.

**CONDITIONS -- SEPA**

During Construction

11.

- a. Full road width shall be maintained for emergency vehicle access to the site and properties further along the street for the duration of all construction activity unless a narrower width is approved by SDOT and meets emergency vehicle access requirements.
- b. During any short term road blockage conforming to the parameters in the MUP decision the driver of any blocking vehicle must remain with the vehicle to move it on demand.

- c. Material deliveries that could block the street shall not occur before 9:00 AM and after 4:30 PM on weekdays and weekends.

**Signature:** \_\_\_\_\_ (signature on file) **Date:** July 1, 2010  
Art Pederson, Land Use Planner  
Department of Planning and Development  
Land Use Services

AP:bg

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